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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,389	11/20/2003	Jeffery J. Wright	03269.0032U1	2578
23850	7590	07/18/2008		
Ballard Spahr Andrews & Ingersoll, LLP SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			07/18/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/719,389

Applicant(s)

WRIGHT, JEFFERY J.

Examiner

Cheryl Juska

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 21-30, 53 and 54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 21-30, 53 and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-8, 21-30, 53, and 54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0134486 issued to Brumbelow et al. as set forth in section 6 of the last Office Action (Non-Final mailed December 12, 2007).

Applicant has not amended the claims in order to overcome the standing prior art rejection. Rather, applicant argues that the examiner's reliance upon the holding of *In re Boesch*, 205 USPQ 215 as support for the 103 rejection is improper since "the relied upon art" does not recognize the foam thickness is a result effective variable (Remarks, page 8, 3rd paragraph). [Note, based upon applicant's arguments, "the relied upon art" is limited to the Brumbelow reference cited in the prior art rejection and not the general prior art of the invention (e.g., carpet art).] This argument is unpersuasive since neither *In re Boesch* or *In re Antonie*, 195 USPQ 6, cited by applicant, requires the specifically cited prior art reference to recognize the variable as result effective. It is sufficient that the general knowledge of the prior art recognizes the variable is result effective; an explicit teaching in the cited art of the rejection is not necessarily required.

Specifically, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. However, a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of

the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 195 USPQ 6. [Note the absence of a teaching that said recognition be stated in prior art reference cited in the rejection.] Common knowledge of the prior art tells one that an increase in the thickness of layer results in an increase in the amount of material employed and, hence, the cost. Additionally, the prior art of carpeting in general also recognizes an increase in the thickness of a foam layer will result in an increase in cushioning properties or resiliency. Furthermore, the carpet art generally recognizes that an increase in thickness of said layer will also result in an increase in acoustic, thermal, and/or impact absorption properties.

Thus, applicant's arguments are found unpersuasive and the above rejection stands.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794

cj
July 17, 2008